



RESTRICT 2006121952

5 PGS

Zoning Case No. C14-06-0031

RESTRICTIVE COVENANT

OWNER: Kelly Capital Group, Inc., a California corporation
ADDRESS: 4350 Executive Drive, Suite 301, San Diego CA 92121
OWNER: Hardage Hotels III, LLC, a Delaware limited liability company
ADDRESS: 12671 High Bluff Drive, Suite 300, San Diego CA 92130
CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.
PROPERTY: A 7.815 acre tract of land, more or less, out of the James Rogers Survey No. 19, Abstract No. 659, in Travis County, also known as Lot 1, Block A, Hardage Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the instrument of record in Document No. 2002246799, of the Official Public Records of Travis County, Texas.

WHEREAS, the Owners of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owners of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owners of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by Robert J. Halls and Associates, dated March 2006, or as amended and approved by the Director of the Watershed Protection and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated May 15, 2006. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

6-22-06
101

4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 16th day of June, 2006.

OWNER:

**Kelly Capital Group, Inc.,
a California corporation**

By: _____
Kenneth R. Satterlee,
President

OWNER:

**Hardage Hotels III, LLC,
a Delaware limited liability company**

By: _____
Samuel A. Hardage,
President

APPROVED AS TO FORM:

Edmund Thomas
Assistant City Attorney
City of Austin

THE STATE OF CALIFORNIA §

COUNTY OF SAN DIEGO §

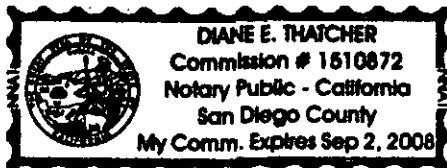
This instrument was acknowledged before me on this the ____ day of _____, 2006, by Kenneth R. Satterlee, President of Kelly Capital Group, Inc., a California corporation, on behalf of the corporation.

Notary Public, State of California

THE STATE OF CALIFORNIA §

COUNTY OF SAN DIEGO §

This instrument was acknowledged before me on this the 16 day of JUNE, 2006, by Samuel A. Hardage, President of Hardage Hotels III, LLC, a Delaware limited liability company, on behalf of the company.



Diane E. Thatcher
Notary Public, State of California

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal

4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 20th day of June, 2006.

OWNER:

**Kelly Capital Group, Inc.,
a California corporation**

By: 

Kenneth R. Satterlee,
President

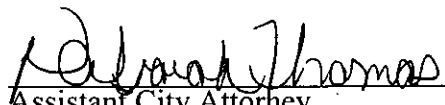
OWNER:

**Hardage Hotels III, LLC,
a Delaware limited liability company**

By: _____

Samuel A. Hardage,
President

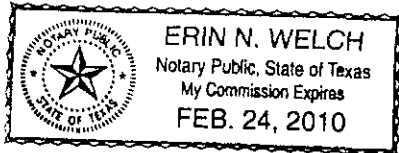
APPROVED AS TO FORM:



Assistant City Attorney
City of Austin

THE STATE OF TEXAS §
COUNTY OF ' TRAVIS §

This instrument was acknowledged before me on this the 20th day of June, 2006, by Kenneth R. Satterlee, President of Kelly Capital Group, Inc., a California corporation, on behalf of the corporation.





Notary Public, State of Texas

THE STATE OF CALIFORNIA §
COUNTY OF SAN DIEGO §

This instrument was acknowledged before me on this the ____ day of _____, 2006, by Samuel A. Hardage, President of Hardage Hotels III, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public, State of California

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2006 Jun 28 03:44 PM 2006121952

BENAVIDESV \$32.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS